



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ROBERT L. SHAVER
DYKAS, SHAVER & NIPPER, LLP
P.O. BOX 877
BOISE, ID 83701-0877

COPY MAILED

NOV 10 2008

OFFICE OF PETITIONS

In re Application of	:	
Dominic R. Delaquil	:	
Application No. 10/677,597	:	ON PETITION
Filed: October 1, 2003	:	
Attorney Docket No. DELD101	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 17, 2008, to revive the above-identified application.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 30, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is December 31, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405, and the submission required by 37 CFR 1.114; (2) the petition fee of \$770; and (3) a proper statement of unintentional delay.

The petition is **GRANTED**.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See *In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$525 extension of time fee submitted with the petition on April 17, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card.

It is noted that the Request for Continued Examination (RCE) with fee of \$405 was submitted on March 3, 2008 and resubmitted April 17, 2008. Since the RCE fee resubmitted April 17, 2008 is deemed unnecessary, this fee will be refunded to petitioner's credit card.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 1621 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

A handwritten signature in black ink, appearing to read 'April M. Wise', is positioned above the printed name.

April M. Wise
Petitions Examiner
Office of Petitions